

# 8(a) Business Development & Small Disadvantaged Business (SDB) Programs

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Visit us at www.sba.gov



#### **Federal Certifications**

#### **Self-Certifications**

Small Business (13cfr121)

Small Disadvantage Business (13cfr124.1000)

Service Disabled Veteran-Owned Small Business

(13cfr125.8)

Woman-Owned Small Business (13cfr127)

#### **Formal Certification Programs**

8(a) Business Development (13cfr124)

HUBZone (13cfr126)



# What is the 8(a) Business Development Program?



#### 8(a)BD Program Objectives

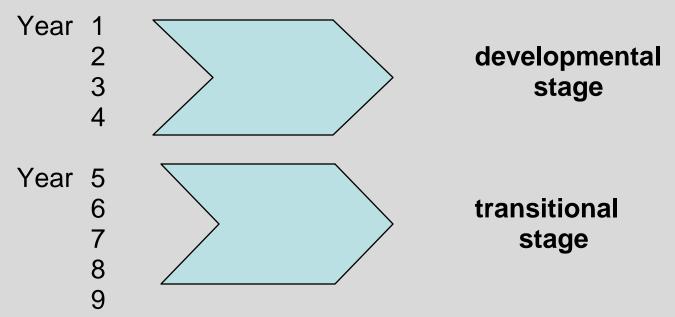
(Sec. 204 of Public Law 100-656)

- ➤ "to promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals..."
- "to promote the competitive viability of such concerns..."
- "to clarify and expand the program for procurement by the United States..."



#### **Term of Participation**

#### START = date of approval



Continuation in the program is dependent on the firm's continuing eligibility as a socially and economically disadvantaged owned/operated firm and continued compliance with the 8(a)BD participation agreement.

<sup>\*</sup>Exception: military reservists who are called to active duty may suspend their participation in the program under certain circumstances.



# What is the Small Disadvantaged Business (SDB) Program?

13cfr124.1000



#### **Program Summary**

The SDB program provides benefits in Federal procurements through incentives for SDBs, Federal agencies and prime contractors.

#### Subcontract Benefit:

- Evaluation Factor where qualified prime contractors can receive a credit when using SDBs as subcontractors (13 CFR §125.3)
- Small businesses won approximately \$67 billion in FY07 as subcontractors.
- ➤ Prime contractors will rely on **self-certification** of SDB status. Protests and appeals will come to the SBA.

#### Prime Contract Benefit:

- ➤ Price Evaluation Adjustment where qualified SDBs receive an adjustment of up to 10% on price on certain Federal procurements.
- ➤ Procuring agency responsible for certification not the SBA. SBA will continue to oversee protests and appeals.
- Currently, only the Coast Guard and NASA are free to utilize this benefit.
- These incentives **do not apply** to 8(a) and small business set asides.



#### **SDB Certification Qualifications**

- > Any firm certified as an 8(a) firm by the SBA is an SDB.
- > Any firm "certified by the SBA as an SDB within three years of the date it seeks to certify as an SDB."
- > Any firm "received certification from the procuring agency that it qualifies as an SDB."
- Any firm that has "submitted an application for SDB certification to the procuring agency and must not have received a negative determination regarding that application."
- Self-certification: "For subcontracts, the rule permits a firm to represent that it qualifies as an SDB if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals."



## Eligibility Criteria 13cfr124



### Eligibility Criteria Common to 8(a) and SDB

- ➤ Social Disadvantage 13cfr124.103
- Economic Disadvantage [with different net worth thresholds] 13cfr124.104
- ➤ Ownership 13cfr124.105
- ➤ Control and Management 13cfr124.106
- > Size 13cfr121
- Special Ownership: ANC, Native American, Hawaiian, CDC 13cfr124.109 - 111



## Social Disadvantage 13cfr124.103







Socially disadvantaged individuals are persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups, without regard to individual qualities.







Individuals are presumed to be socially disadvantaged if they are a **U.S. Citizen** and a member of one of the following groups:

- ➤ Black American
- >Asian Pacific American
- ➤ Hispanic American (includes individuals of Spanish & Portuguese descent).
- ➤ Native American
- ➤ Subcontinent Asian American



### Persons not members of designated groups must:

- Establish their case by a <u>preponderance</u> of the evidence;
- ➤ The disadvantage may stem from race, ethnic origin, gender, physical handicap, long term environmental isolation, or other similar causes;



- The applicant must have personally suffered disadvantage in the United States;
- The disadvantage must be chronic & substantial;
- The discrimination must have negatively impacted on business advancement.





#### What is "Preponderance"?

Generally, preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the facts asserted is more probable than not.



#### **Types of Evidence for Preponderance (1)**

- Court or Administrative findings of discrimination.
- > Statements made under oath to an investigator, in court or in an administrative proceeding.
- Affidavits or sworn statements by the individual claiming disadvantage.
- > Affidavits or sworn statements by independent third parties.



#### **Types of Evidence for Preponderance (2)**

- Documentary evidence which corroborates or supports assertions made by an applicant such as:
- Personnel Records
- Payroll Records
- Rejection letters on job applications.
- Denials of credit applications.
- Financial statements.
- Documents relating to rejected contract offers, i.e., bid abstracts, solicitations.
- Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.
- Documents setting forth company policy(ies) which are alleged to be discriminatory.



#### **Types of Evidence for Preponderance (3)**

Evidence which tends to show generalized patterns of discrimination against a nondesignated group or statistical data showing that businesses owned by a specific nondesignated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.



#### **Types of Evidence for Preponderance (4)**

SBA will consider any relevant evidence in assessing a claim of social disadvantage. In every case, however, SBA will consider the experiences of the individual, where applicable, in education, employment and business history to see if the totality of the circumstances shows disadvantage in entering into or advancing in the business world. Evidence relating to all three areas should be addressed, if applicable to the individual's case and each circumstance should demonstrate how it has affected the individual's entrance into and advancement in the business world. The failure to establish disadvantage in any one or two areas does not prevent an individual from meeting the negative impact requirement as long as the totality of the circumstances experienced by the individual demonstrates such disadvantage.



## Economic Disadvantage 13cfr124.104

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit.



#### **Net worth criterion:**

After excluding the individual's equity in the firm and equity in the primary residence, net worth may not exceed

\$250,000.00 for 8(a)

OR

\$750,000 for SDB

**NET WORTH** 

less equity in primary residence

less <u>equity in business</u>

equals adjusted net worth



#### **Supplemental Definitions**

- •Personal Income: cannot exceed an average of \$250,000 over the previous three years
- Total Assets: cannot exceed \$4 million

#### **Exceptions**

- •Retirement Accounts: will be excluded from adjusted net worth if unavailable until retirement age without a significant penalty (must provide documentation)
- •Personal income received from the company to pay corporate taxes or that was reinvested in the firm will not be counted (must provide documentation)



#### **Spousal Determination**

- •Spouse's financial situation will be considered if:
  - Has a role in the business
  - •Has lent money to, provided credit support to, or guaranteed a loan of the business

Under all circumstances – spouse must provide personal financial statement to SBA

•50% of joint assets and joint liabilities on each



### Ownership 13cfr124.105



- ➤ At least 51% unconditional ownership by the disadvantaged individual(s).
- ➤ Partnerships: Agreements must reflect unconditional ownership.
- ➤ Limited Liability Company: Disadvantaged individuals must own at least 51% of each class of member interest.



#### > Corporations:

- Disadvantaged individuals must own at least 51% of each class of voting stock and at least 51% of all outstanding stock.
- Stock option plans for nondisadvantaged individuals will be viewed as if they have been exercised.



### Control & Management 13cfr124.106



Partnerships: Agreements must reflect unconditional management by disadvantaged partner(s).

Limited Liability Company: One or more disadvantaged individuals must serve as management members with unconditional control.



**Corporations:** How control is established.

A. Disadvantaged directors of the board must control the board by actual number of votes and must be able to establish a quorum without the presence of nondisadvantaged directors.

OR



#### B. Control without considering the board of directors:

- 1. A single disadvantaged individual owns 100% of the voting stock.
- 2. A single disadvantaged individual owns at least 51% of the voting stock, is on the board of directors and no super majority\* voting requirements exist. If a super majority\* requirement exists, the disadvantaged individual must own at least the percentage of voting stock necessary to overcome any super majority\* requirements.
- 3. If more than one disadvantaged individual, each disadvantaged individual is on the Board of Director and together own at least 51% of the voting stock and no super majority\* voting requirements exist, and there are enforceable agreements of the shareholders permitting one of them to vote all stock as a block without a shareholders meeting. If a super majority\* requirement exists, the disadvantaged individuals must own at least the percentage of voting stock necessary to overcome any super majority\* requirements.
- \* A super majority is a percentage of votes required by shareholders to make decisions on behalf of the concern. For example, if a 2/3 vote is required to approve a bylaw change, disadvantaged individuals must have at least 2/3 of the votes necessary to control the concern.



### What constitutes Control? 13cfr124.106



#### A Disadvantaged Individual Must:



# Do you control the Operations? 13cfr124.106



#### **Tests:**

- Does a disadvantaged individual or individuals devote full-time to the business?
- Do you have sufficient managerial experience to run the concern?
- Do you have ultimate managerial control over individuals with technical expertise and/or critical licenses?



### Do Non-disadvantaged Individuals have the Ability to Control your Firm? 13cfr124.106



#### **Tests:**

- Do contractual arrangements exists that allow a nondisadvantaged individual to control the firm?
- Is the nondisadvantaged individual a previous employer or supervisor?
- Does a nondisadvantaged individual:
  - hold the critical license and have an equity interest in the applicant concern
  - provide the necessary licenses or bonding
  - have unlimited access to the business bank accounts
  - provide critical financing
  - control through business loan arrangements
  - receive excessive compensation.



## **Size 13cfr121**



Firms must be small based on their primary NAICS Code, including affiliates.

Size is determined either by:

- >average 3 years revenues
- ># of employees (manufacturers, dealers, wholesalers)

See 13 CFR 121 Size Regulations or visit our website: <a href="https://www.sba.gov/size">www.sba.gov/size</a>.



## Potential for Success 8(a) Only 13cfr124.107



#### **Factors considered:**

- Proof of two years operation in the firm's primary industry as verified by revenues reported in business tax returns.
- Financial capability: sufficient capitalization, financial performance, bonding capacity, manageable debts.
- Managerial and Technical capability: performance on previous contracts, firm has the necessary personnel, licenses, certifications, facilities, prior experience.
- Management capability: Education, experience and training of CEO and other managers, magnitude and complexity of past/current jobs, management systems.
- Qualifications for ability to perform on Federal contracts: relevant contracting experience, ability to meet Federal procurement policies.



## Waiver of the Two Year Rule 8(a) Only 13cfr124.107



#### SBA may waive the two-year rule if:

- The individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;
- The applicant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD Program;
- The applicant has adequate capital to carry out its business plan as a Participant;
- The applicant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category;
- The applicant has, or can demonstrate its ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform such contracts as a Participant.



## Ineligible Businesses & Individual Disqualification 8(a) Only

13cfr124.108



- Ineligible businesses: brokers \*; debarred or suspended persons or concerns; nonprofit organizations. Franchises may be allowed contingent upon SBA review of the franchise agreement.
- ➤ A business may participate only once. Even if ownership and control has completely changed, firm may not reapply.
- Any person who has used his/her disadvantaged status to qualify another firm shall be regarded as non disadvantaged.
- \* A broker is a concern that adds no material value to an item being supplied to procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.



## Good Character 8(a) Only 13cfr124.108



#### What shows lack of good character?

- Adverse information regarding possible criminal conduct by the applicant or its principals.
- Violations of any SBA regulations.
- Debarred or suspended individuals or firms.
- > Applicant firms and principals that lack business integrity as shown by an indictment, guilty plea or civil judgment.
- Any principal who is incarcerated or on parole or probation.
- Evidence that the firm knowingly submitted false information during the application process.
- Any firm or any of its principals that fail to pay financial obligations to the Federal Government.



# Assistance Available to 8(a) BD Program Participants 13cfr124.404



#### **Available Assistance includes:**

- Training by SBA resource partners in all areas of business. General training sessions given in the SBA Entrepreneur Center.
- Information on SBA loans and other programs.
- > 8(a)BD Showcase and other marketing assistance.
- SBA's Mentor Protégé Program
- Assistance in identifying Government Procurement agencies and their Procurement Forecasts.
- Introduction and search letters and follow-up on specific requirements identified by firm.



#### **Available Assistance includes:**

- Subcontracts with federal government (SBA serves as the prime contractor).
- > 7(j) Management and Technical Assistance
- ➤ Information on various contracting opportunities with county, airports, large government primes.



# What is expected of 8(a)BD Program Participants? 13cfr124.601



- > SELF MARKETING to federal procurement agencies.
- Submission and annual update of business plan.
- Access to company records by SBA.
- Informing SBA of any changes affecting 8(a)BD eligibility, i.e. changes in business structure, ownership, etc.
- Submission of year end financial statements and annual tax returns.
- Participation in business development training opportunities and networking offered by SBA.
- Staying current in financial obligations to the Federal Government.



## 8(a)BD Contracting 13cfr124.500 series



A requirement is offered to the 8(a)BD program by federal procuring agencies as a result of <u>aggressive self marketing</u> on the part of the 8(a)BD firm.

Very few <u>open</u> requirements are offered to the 8(a)BD program.

Sole Source requirements = below competitive threshold

<u>Competitive threshold</u>: When the estimated value (including options) exceeds \$4.0 million for services and construction and \$6.5 million for manufacturing, requirement will be competed among 8(a)BD firms.

Federal Acquisition Regulations (FAR) 19.8: Apply to and govern 8(a)BD contracts.



## Application Processing 13cfr124.200 series



#### **How to Apply**

- On the internet using the Electronic 8(a)/SDB Application. This process eliminates paper forms and can speed up the processing of the certification request.
- Paper forms mirroring this new online application are only available from SBA Headquarters in Washington DC.
- > SDB certification is handled in two ways:
  - ➤ For prime contracts with the price evaluation preference, certification is handled through the agency awarding that contract
  - ➤ For subcontract opportunities, SDBs will self-certify. SBA will oversee any protest or appeal of the self-certification.



## Certification Application Submission: Pre-Requisites

- Before proceeding with the 8aSDB application process, Applicants must first complete the following steps in the order shown:
- Satisfactorily complete SBA's 8a Suitability Tool (<u>www.sba.gov/8(a)</u>)
- 2. Register with SAM (<u>www.sam.gov</u>)
- Apply for GLS User ID and Password: System checks that applicant has a bona fide registration with CCR before providing GLS User ID and Password.
- 4. If successful with #3 above, applicant receives User ID and Password via email along with link to the GLS login page



#### Certification Application Submission: Logging In

- Log in to GLS at: https://eweb.sba.gov/gls/dsp\_login.cfm
- Once logged in, applicant enters User ID and Password to proceed
- Buttons along left side of SBA Account Login page provide applicant with assistance as needed





## Certification Application Submission: Getting Started



- Applicant selects 8aSDB Application to proceed to 8(a)/SDB Certification Home Page
- Update Profile link allows applicants to input/update important user information
- Buttons along top allow applicant to exit, obtain help, update their user profile, and change their password—buttons for "Access" and "Choose Function" are for SBA personnel only



## Certification Application Submission: Main Page



- Two tabs are available to the user from the Application Main Page:
   Overview and Instructions
- Overview tab contains all of the application forms and allows applicant to track progress towards completion
- Instructions tab provides additional information on the requirements and purpose of the 8a/SDB program (still under construction)



## Certification Application Submission: Overview Tab



- 8aSDB Application Status allows user to track overall progress of application; constrains a user to complete steps of the application process in a particular order.
- Individual Forms Status (see below; down center of page) provides detailed progress of each application form
- For quick reference, My SBA Forms also indicates which required application forms have been completed.
- Preview Application Forms enables users to view individual forms as PDF files populated with the information that has been entered online.



## Certification Application Submission: A 6-Step Process

#### 1. Submit Notarized Authorization Form

- Download and print the 'Certification for the Receipt of Electronic 8(a)/SDB Information from Individual Applicants' form
- Sign form, get it notarized, and include in final packet mailed to SBA

#### 2. Complete Required Application Forms

Complete each form by answering the questions therein

#### 3. Assemble Supporting Documentation

- Applicants must include certain Supporting Documents with their application—a checklist is provided to help with organization
- View and print checklist
- Sign checklist upon completion and include in final packet mailed to SBA

#### 4. Submit On-Line Input

#### 5. Download, Print and Sign Completed Application

- Review completed application and verify that all the information is correct
- Print it out, sign, and date all forms in the appropriate signature blocks, including the attachment pages.
- Include signed forms in final packet mailed to SBA
- 6. Mail Application, Supporting Documentation & Checklist to SBA





#### **Step 1: Submit Notarized Authorization Form**

- Download and print the 'Certification for the Receipt of Electronic 8(a)/SDB Information from Individual Applicants' form
- Sign form, get it notarized, and include in final packet mailed to SBA
- Click 'I Have Completed This Step' upon conclusion to proceed to Step 2





#### **Step 2: Complete Required Applications**

- Applicants must fully complete all required application forms in order to proceed to Step 3
- A detailed status of each form is available at all times
- •Click 'Preview Application Forms' to view PDF versions of respective forms. Each PDF at this stage is clearly labeled with 'DRAFT' watermark to prevent applicant from circumventing the process.
- Click 'I Have Completed This Step' to proceed to Step 3





#### **Step 2: Complete Required Applications**

#### **SBA FORMS**

- 1. 1010
- 2. 1010IND
- 3. 413
- 4. 912
- **5**. 1623
- 6. 1790
- 7. 4506T



#### **Step 3: Assemble Supporting Documentation**

- A dynamic checklist (see also following slide) is available to the user as an additional organizational aid
- Checklist must be signed and included in final Application submission that is mailed to SBA
- Proceed to Step 4 by clicking 'Confirm'





## Certification Application Submission: Step 3 (Cont.)

#### **Step 3: Assemble Supporting Documentation – Dynamic Checklist**

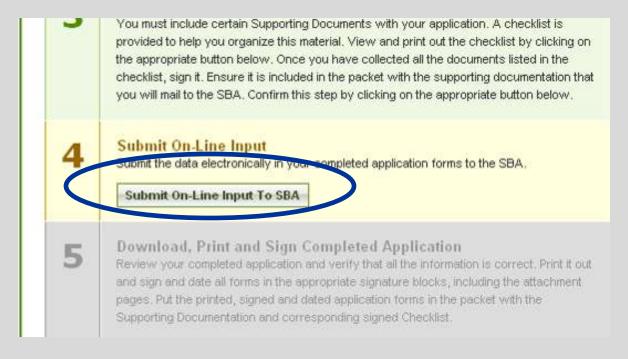
Checklist and List of Supporting Documentation for Application Submission Societe Generale  (This checklist will provide basic guidelines on the attachments that you should submit with your application)  SBA will keep this information and the information provided on the application confidential to the extent required		
	by the law.	
Notarized Authorization Form		
Certification for the Receipt of Electronic 8(a)/SDB Information		
Form 1010, Section I: Business Profile		
A detailed explanation, including supporting documentation, for each "Yes" response to questions in Section I, if applicable.		
Copies of all stock certificates (front and back), stock ledger, buy/sell agreements, transmutation agreements, voting agreements.		
Certificate of Good Standing (for Corporations and LLCs, if applicable).		
SBA Form 1623, Certification Regarding Debarment, Suspension, and other Responsibility Matters.		
Balance sheets and profit and loss statements no older than 90 days and for the preceding three (3) fiscal		
	Signature	Date

- Dynamic Checklist is available to the user as an additional organizational aid
- Checklist must be signed and included in final Application submission that is mailed to SBA



#### **Step 4: Submit Online Input**

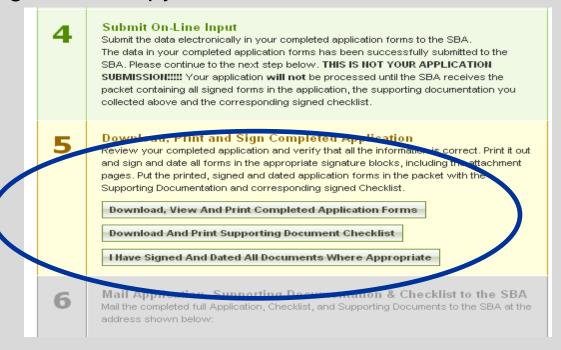
- Once the firm has completed all necessary forms and confirmed collection of all supporting documentation, users can electronically submit their Application submission by clicking 'Submit On-line Input to SBA'
- Hard copies of the Application submission with wet signature must also be provided to SBA in order to fully complete the process





#### Step 5: Download, Print and Sign Completed Applications

- Firms can download, view, and print all necessary forms and the checklist upon completion. 'Draft' watermark is removed from the forms at this stage, to enable applicant to mail them to SBA.
- Prompts firm to sign and date all necessary documentation prior to submitting in hard copy to SBA





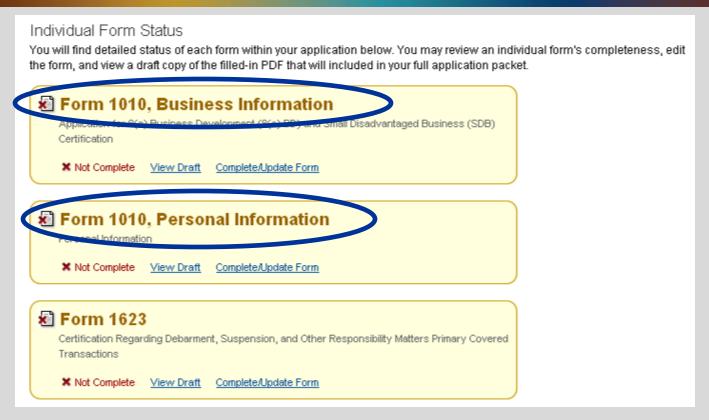
## Step 6: Mail Annual Review Forms, Supporting Documentation & the Checklist to SBA

- Prompts firm to mail in comprehensive packet of Annual Review documentation to SBA
- Destination address is included to facilitate submission, correct address is keyed to applicant geographic location
- A Thank You message is prompted by clicking 'I Have Mailed The Completed Packet to the SBA'





#### Certification Application Submission: Individual Form Status



- Displays completion status of Forms 1010 Business Information;
   1010 Personal Information; 1623; 1790; 912; 413; and 4506-T
- User can verify status, view draft PDF versions, and complete/update all required application forms



## Certification Application Submission: Completing Forms

### **Example 1: Form 1010 Business Information**



Example 2: Form 413 Personal Financial Statement



- User input automatically transferred to PDF version
- Buttons along top of form pages allow user to save changes to and verify completeness of forms, and return to Overview.
   Applicant should always remember to 'save changes' before proceeding to another form or stage.



## Place of Filing



Applications for the 8(a)BD program are processed by the Office of Certification & Eligibility (OCE) Unit that services the Federal Region containing your state.

Philadelphia OCE Unit - Regions 1, 2, 3, & 4 1150 First Avenue, Suite 1001 King of Prussia, PA 19406

San Francisco OCE Unit - Regions 5, 6, 7, 8, 9 & 10
455 Market Street, 6th Floor
San Francisco, CA 94105
(415) 744-0328

For assistance in determining your Federal Region, contact the SBA District Office servicing your locality or state.



### 8(a) BD Processing Times

- OCE Unit reviews application for completeness and advises firm of deficiencies within 15 days.
- ➤ If incomplete, the applicant submits corrections within 15 days and a determination of completeness is made by OCE Unit within 10 days of receipt of firm's response.
- ➤ The applicant is advised of SBA's decision by the Associate Administrator for Business Development within 90 days from the date the completed application was accepted.
- ➤ If declined, the applicant is advised of their right to request reconsideration within 45 days of receipt of the letter of decline. Should the concern not seek reconsideration, there is a mandatory 12 month waiting period before the firm may reapply.
- If declined after reconsideration, there is a mandatory 12 month waiting period before firm may reapply.
- Firms declined solely for size, may reapply immediately.



#### **Local Resources**

- PTACs: www.sbtdc.org/ptac 800-258-0862
- NC SBA District Office: www.sba.gov/nc
- SBTDCs: www.sbtdc.org
- SCORE: www.score.org
- Veterans Business Outreach Center:
  - www.fsuvboc.com
- Women's Business Centers www.sba.gov
- NCMBC: www.ncmbc.us, (877) 245-5520
- SBCs: www.ncsbc.net



#### **Questions?**

## Daniel Lucero Business Opportunity Specialist NC District Office 704 344-6396; daniel.lucero@sba.gov

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